Supreme Court, U.S.
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No. : 96-834

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

ALDERIC JENSEN, SR. ET AL.,

Petitioners

vs.

COUNTY OF LOS ANGELES

Respondent

On Petition for a Writ of Certiorari
To The California Supreme Court

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

QUESTION PRESENTED

Should certiorari be denied:

(1) Where the decisions below were based on an adequate state ground;

(2) When Petitioners never raised any federal issue before the California Supreme Court, or any of the lower courts of the State of California involved in this action;

(3) Where the decisions of the courts below did not pass upon any federal question; and

(4) Where the complained of California statute (California Health and Safety Code, § 7104) bore a rational relationship to a legitimate state interest.

II.

LIST OF PARTIES

1. Petitioners, Alderic Jensen, Sr.
   Doris Jensen

2. Respondent, County of Los Angeles

III.

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V.

OPINIONS BELOW

The California Supreme Court did not issue an opinion regarding the present matter.

VI.

JURISDICTION

This court does not have jurisdiction over the present matter because:

(1) The matters below were dispensed with on adequate state grounds (see, Herb v. Pitcairn 324 U.S. 117, 125-126 (1945)); and

(2) The issues presented by the petition were not raised by Petitioners below nor were passed upon by the California Supreme Court. (see Tacon v. Arizona 410 U.S. 351, 352 (1973)).

VII.

STATUTES INVOLVED

1. California Health and Safety Code, § 7104

2. California Government Code, § 815

3. Fourteenth Amendment to the United States Constitution

VIII.

STATEMENT OF CASE

Petitioners are the surviving parents of Alderic Jensen, Jr., the latter having died on January 22, 1990. On March 16, 1990, Respondent, County of Los Angeles cremated the remains of petitioners' decedent.

Subsequently petitioners brought an action, alleging that respondent had negligently failed to notify petitioners of the death of their son.

On March 4, 1994, the California state trial court granted respondent's Motion for Judgment on the Pleadings, finding that California Health and Safety Code, § 7104 operated as a complete defense to petitioners' cause of action.

In this respect, California Health and Safety Code, § 7104 provides:

"When no provision is made by the decedent, or where the estate is insufficient to provide for interment and the duty of interment does not devolve upon any other person residing in the State or if such person cannot after reasonable diligence be found within the State the person who has custody of such remains may require the coroner of the County where the decedent resided at time of death to take possession of such remains and he shall inter the dead in the manner provided for the interment of indigent dead. [emphasis added.]

The highlighted passage from the statute set out above clearly limits the duty of respondent to search only within the boundaries of the State of California for the purposes of notifying petitioners of the death of their son.

Petitioners have admitted that, at the pertinent times specified by their complaint, they were not within the borders of California and were residents of the State of Florida.

Given the conditions specified by California Government Code, §815 the state trial court and California Court of Appeal held that California

Health and Safety Code, § 7104 operated to vitiate any duty owed by respondent to notify petitioners of the death of their son, such that petitioners, as a matter of law, were unable to state a cause of action against respondent.

No issue was raised by petitioners at the state trial court level as to the constitutionality of California Health and Safety Code, § 7104 nor did they argue that respondent had acted unconstitutionally.

Petitioners then appealed the trial court judgment to the California Court of Appeals. On appeal, petitioners again did not allege that California Health and Safety Code, § 7104 was unconstitutional nor did they argue that said statute had been unconstitutionally applied by the trial court.

In fact, petitioners made no argument before the California Court of Appeal which invoked any federal question.

On June 19, 1996, the California Court of Appeal issued its opinion in this matter, affirming the judgment of the trial ct. in favor of respondent.

The appellate court opinion did not discuss the constitutionality of California Health and Safety Code, § 7104 nor that of any other statute. The opinion of the California Court of Appeal did not discuss the constitutionality of the trial court's application of California Health and Safety Code, § 7104 or that of any other statute or provision. In fact, the opinion of the California Court of Appeal did not address any federal question, whatsoever.

On July 17, 1996, petitioners petitioned the California Supreme Court for review of the California Appellate Court's decision. Once again, appellants made no argument to the California Supreme Court related to the constitutionality of California Health and Safety Code, § 7104, or that of any other statute or provision. Furthermore, petitioners never made any argument to the California Supreme Court that California Health and Safety Code, § 7104, or any other statute or provision, had been unconstitutionally applied by the lower courts. Finally, the petition to the California State Supreme Court did not invoke any other federal question.

On August 21, 1996, the California Supreme Court denied the petition for review without opinion.

IX.

ARGUMENT

A. THE PETITION MUST BE DENIED BECAUSE THE MATTERS BELOW WERE DECIDED ON ADEQUATE STATE GROUNDS.

Where the matters below were decided on adequate state grounds, this court should not exercise its certiorari jurisdiction. See Herb v. Pitcairn 324 U.S. 117, 125-126 (1945).

In the present matter, the decisions of the California state trial court, the California Court of Appeal and, by implication, the California Supreme Court (which issued no opinion in denying a petition for hearing), were decided solely upon the issue of California state law---specifically the California Tort Claims Act, as embodied in California Government Code, § 815, et seq and California Health and Safety Code § 7104.

Absolutely no issue of federal law was addressed or applied in the decisions below.

Consequently, respondent respectfully requests that this court not invoke its certiorari jurisdiction in this matter and that the present petition be denied.

B. THE PETITION MUST BE DENIED BECAUSE THE ISSUES PRESENTED WERE NOT RAISED BY THE PARTIES NOR PASSED UPON BY ANY OF THE COURTS BELOW.

This court should not issue a writ of certiorari because the petition presents questions that were not raised by the petitioner, nor passed upon by the State courts below. See Tacon v. Arizona, 410 U.S. 351, 352 (1973).

In Tacon (supra), a soldier in the U.S. Army was convicted, *in absentia*, for the crime of selling marijuana in violation of state law.

On appeal, the Arizona Supreme Court affirmed the soldier's conviction.

The soldier then petitioned this court for certiorari, presenting questions as the constitutionality of the State of Arizona's authority to try him *in absentia*. In addressing this matter, this court stated:

> "Upon reviewing the record, however, it appears that these broad questions were not raised by the petitioner below nor passed upon by the Arizona Supreme Court. We

cannot decide issues raised for the first time here (citations omitted). [*410 U.S. at 352.*]"

In the present matter, the petition raises questions which were never raised below by petitioners, nor passed upon by the California Supreme Court, or any of the lower courts of the State of California.

In view of the foregoing, respondent submits that the present petition be denied.

C. CALIFORNIA HEALTH AND SAFETY CODE, §7104 DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Statutory limitations placed on a party's ability to sue the State of California or a subdivision thereof do not violate the due process clause of the Fourteenth Amendment to the United States Constitution if the statute is rationally related to a legitimate state purpose. See Martinez v. California 444 U.S. 277, 283 (1980).

In Martinez, plaintiffs were the surviving parents of a girl who was murdered by a recent parolee. Plaintiffs sued the State of California,

alleging, inter alia, that the state was negligent in releasing the murderer of their child. The action was dismissed by the state trial court, which held that California Government Code, § 845.8(a) immunized the state from liability.

The plaintiffs in Martinez appealed to the California Court of Appeal on the grounds that the statutory immunity violated the due process clause of the Fourteenth Amendment to the United States Constitution. The California Court of Appeal upheld the dismissal and plaintiffs then appealed the matter to this court.

This court affirmed the California Court of Appeal, holding that California Government Code, § 845.8(a) was rationally related to a legitimate state interest and thus did not violate the due process clause of the Fourteenth Amendment [See *444 U.S. at 283*].

As in Martinez, petitioners' underlying lawsuit against the County of Los Angeles in the present matter is one for money damages resulting from the alleged negligence of a California public entity. As such, petitioners' lawsuit is governed by the California Tort Claims Act, as embodied in California Government Code, § 815, et seq.

In this respect, California Government Code, § 815 provides:

> "Except as otherwise provided by statute:
>
> (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
>
> (b) The liability of a public entity establish by this part (commencing with section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person."

The statutory limits imposed by the California Tort Claims Act, as embodied in California Government Codes, § 815, et seq., upon an individual's right to sue a public entity of the State of California have been upheld on federal constitutional grounds in County of Los Angeles v. Superior Court (1965) 62 Cal. 2d 839, 846 [44 Cal. Rptr. 796, 402 P. 2d 868] (finding that the Tort Claims Act did not violate the equal protection clause of the Fourteenth Amendment) and in Datil v. City of Los Angeles (1968) 263 Cal. App. 2d 655, 660-661 [69 Cal. Rptr. 792] (cert. denied) (also finding no violation of Fourteenth Amendment due process).

With respect to the constitutionality of California Health and Safety Code, § 7104 [which was quoted above, at page 3 of this brief], said statute is designed to limit the duties of **any person** ---not just a public entity---who is in possession of a dead body. By its terms the duty to search is limited to individuals within the state borders. Such limitations are proper so as not to impose undue economic burden on any person to search for other individuals who may (or may not) have made provisions for the interment of the deceased. Without such statutory limitations, a duty to search for a person who has made plans for the interment of the remains could extend globally. Such a result flies in the face of common sense.

Thus, California Health and Safety Code, § 7104 is rationally related to the purpose of balancing the interests of those who wish to formally inter the decedent against the search and notification costs imposed upon any person---whether a private person, corporation, or public entity---who happens to be in possession of the remains.

In view of the foregoing, respondents respectfully submit that California Health and Safety Code, § 7104 does not violate the due process clause of the Fourteenth Amendment to the United States Constitution.

D. CALIFORNIA HEALTH AND SAFETY CODE, § 7104 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In the present matter, petitioners do not assert that they have been discriminated on the basis of race, gender, alienage or national origin.

Rather, given the facts of this case, the standard of review for equal protection analysis is the traditional "rational relationship" test. See Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 93-94 (1978).

In the present matter, contrary to Petitioners' insinuations, California Health and Safety Code, § 7104 does not discriminate between residents and non-residents who are within the state. To the contrary, California Health and Safety Code, § 7104 applies to any person who is within the state (whether as a resident or non-resident). Thus, had petitioners been in the state of California at all pertinent times specified by their action, they would have come under the class of individuals specified by California Health and Safety Code, § 7104 who conceivably would be owed a duty of notification by respondent regardless of whether they were residents or not.

However, petitioners do not dispute the fact that they were not within the state borders at all pertinent times described in their lawsuit.

Thus, for equal protection analysis, the question devolves into an inquiry as to whether the California state legislature could have had a rational basis to exclude persons outside of the state boundaries from the class of individuals to whom respondent would have a duty to search for and notify.

In this regard, the classification embodied in California Health and Safety Code, § 7104 is rationally related to limiting the search and notification costs which would be imposed upon any person within California who happens to be in possession of a dead body. To limit such costs, a line had to be drawn at some point.

If petitioners are allowed to prevail in their argument that the classification should be extended to afford protection to persons within the borders of the United States, what would prevent other potential claimants from asserting that the duties of respondent under California Health and Safety Code, § 7104 should be extended to the North American continent, or the Western Hemisphere, or the entire globe. Such an expanded duty would have dire economic consequences on any person---whether private individual, corporation, or public entity---who is within the State of California and who is in possession of a dead body.

The legislature of the State of California could reasonably conclude that, in balancing the costs to be imposed upon persons in possession of a dead body against the interests of those seeking to formally inter the remains, the line would be drawn at the State borders.

In this respect, as noted above, California Health and Safety Code, § 7104 does not create any classification among individuals within the state. Had petitioners been in the State at all pertinent times within the State of California, they arguably would have been within the class of individuals who would benefit from the duty imposed by California Health and Safety Code, § 7104.

In view of the foregoing, respondent submits that California Health and Safety Code, § 7104 reasonably limits the obligations of persons in possession of a dead body to search for other persons who might be interested in formally interring the remains. The statute accomplishes this purpose by reasonably weighing the search and notification costs of the person in possession of the dead body against the benefits which would be derived by other persons wishing to conduct a memorial service.

In view of the foregoing, Respondent respectfully submits that California Health and Safety Code, § 7104 does not violate the equal protection clause of the United States Constitution.

E. THE CASES CITED IN THE PETITION ARE DISTINGUISHABLE FROM THE FACTS OF THIS CASE

The cases cited by petitioners are all distinguishable from the circumstances of the present matter.

Specifically, the case of McCullough v. Virginia 172 U.S. 102 (1898) involved the issue of whether a statute violated the Contract Clause of Article One, §10 of the United States Constitution.

Similarly, another case cited case by petitioners, Williams v. Bruffy 102 U.S. 248 (1880) involved a law promulgated by the former Confederate States of America which effectively impaired a contract.

Finally, the case of Michigan v. Long 463 U.S. 1032 (1983) involved the issue of a valid search and seizure under the Fourth Amendment.

None of the cases cited by petitioners have any relevancy to the issues raised by the present matter and should not be considered by this court in determining whether its certiorari jurisdiction should be exercised in this case.

XI.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that the present petition must be denied.

DATED: January 23, 1997

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